

ESTTA Tracking number: **ESTTA365850**

Filing date: **08/30/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185325
Party	Plaintiff La Senza Corporation
Correspondence Address	GEORGE W. LEWIS JACOBSON HOLMAN PLLC 400 7TH STREET, NW WASHINGTON, DC 20004 UNITED STATES mcuccias@jhip.com, trademark@jhip.com, joyhenart@jhip.com
Submission	Other Motions/Papers
Filer's Name	Matthew J. Cuccias
Filer's e-mail	glewis@jhip.com, mcuccias@jhip.com, trademark@jhip.com, joyhenart@jhip.com
Signature	/Matthew J. Cuccias/
Date	08/30/2010
Attachments	I-5837 Motion for 56(f) Discovery 08-30-2010 - public version.wpd.pdf (73 pages)(1985085 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LA SENZA CORP.,

Opposer

vs.

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

Opposition No. 91185325

OPPOSER’S MOTION FOR DISCOVERY UNDER FED. R. CIV. P. 56(f)

COMES NOW the Opposer, La Senza Corp. (“Opposer”) and, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure and Section 528.06 of the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”), seeks an opportunity for reasonable, limited discovery in order to respond to Applicant’s Motion for summary judgment (the “SJ Motion”). Specifically, Opposer seeks the amount and geographic scope of Applicant’s sales of products under the ESSENZA mark in the United States.

In support of its Motion, Opposer submits the attached Declaration (Exhibit 1), outlining the grounds on which Opposer contends it cannot effectively oppose Applicant’s Motion without an opportunity for discovery in this matter (“Cuccias Declr.”).

ARGUMENT

Opposer cannot effectively oppose Applicant's SJ Motion without the requested discovery. Rule 56(f) of the Federal Rules of Civil Procedure authorizes the Board to "order a continuance to permit discovery to be taken for a party opposing a summary judgment motion . . . [where] same is necessary to enable him to respond to the motion." *Orion Group, Inc. v. Orion Ins. Co., P.L.C.*, 12 USPQ 2d 1923, 1924 (TTAB 1989). Such requests are liberally considered by the Board.¹

Applicant argued that it is entitled to summary judgment on Opposer's Section 2(d) claim on the basis of (only) three *du Pont* factors: similarity of marks, similarity of goods, and an absence of actual confusion. In support of its position on two of these three factors, Applicant relied on its own sales information. However, the sales information appears to encompass sales in countries other than the United States, and the geographic scope of such sales within the United States is not clear. Accordingly, Opposer respectfully submits that it is entitled to discovery directed to these issues, as outlined more fully below.

Rule 56(f) requests are especially appropriate where the requested information and documents are "largely within the control of the party moving for summary judgment," *see* TBMP §528.06 (emphasis supplied). In this case, the requested materials are *exclusively* within the control of the party moving for summary judgment, making the present request especially meritorious.

¹ See T. Jeffrey Quinn, TIPS FROM THE TTAB: DISCOVERY SAFEGUARDS IN MOTIONS FOR SUMMARY JUDGEMENT: NO FISHING ALLOWED, 80 Trademark Rep. 413, 416 (1990).

1. Opposer Is Entitled to Applicant's Sales Volume for U.S. Sales Only

Applicant's SJ Motion argued that an alleged absence of actual confusion weighs in favor of a finding of no likely confusion – where, Applicant claims, there has been contemporaneous use of the parties' respective marks. *See* SJ Motion, p. 18.² While Opposer disputes the relevancy of this factor, it is entitled to discover Applicant's position. For example, in support of Applicant's contention, Applicant relied on its total sales volume of “scent diffusers” under the opposed mark. *Id.* However, it would appear that these sales figures include sales which occurred *outside* of the U.S. market, including sales made in _____; and are, therefore, irrelevant to the issues in this *inter partes* proceeding.

In particular, it would appear that Applicant has relied on sales from, *at least*, several of its customers that are _____ retailers which sell products primarily – or, exclusively – in _____. Accordingly, these sales should not be included when determining Applicant's volume of sales in the U.S. market for purposes of determining Applicant's commercial presence in the United States.

For example, _____ one of Applicant's customers³ appears to sell (perhaps, exclusively) products outside of the United States. Aside from the country designation in the customer's name,⁴ a website found _____ which is rendered in both French and English languages, and is presumed to be the website of Applicant's named customer), includes a “terms and

² Similarly, in discussing the relative similarity of the parties' goods, Applicant claims to have a significant commercial “presence” in the candle market, and proffers a total sales figure in support of the claim. Again, this sales figure appears to include sales to non-US markets, which are not relevant in the present proceeding.

³ *See* Cuccias Declr. Exhibit F, at Bates No. A-569– A-572.

⁴ The significance of which is enhanced by the names of other _____ “retailers, such as

conditions of Use” page, which states, in part:

“This Site may only be used by residents of [REDACTED] to order goods or services intended to be delivered to addresses in [REDACTED].”

See Cuccias Declr., Exhibit F (emphasis in original). Additionally, the “Contact Us” page displays a physical address in [REDACTED]. *Id.*

Similarly, another customer, [REDACTED]⁵, appears to not make *any* sales in the United States. A website found at [REDACTED] (which is presumed to be the website of Applicant’s named customer), includes a “store locator page” which demonstrates that the retail customer does not operate any retail stores in the United States:

REDACTED [REDACTED] **REDACTED** **REDACTED**
[REDACTED]

See Cuccias Declr., Exhibit H. Similarly, the “My Account” page states: “At present [REDACTED],s only ships within [REDACTED].” *Id.*

A third customer, [REDACTED]⁶, appears to sell products in [REDACTED] only. For example, the listing of stores on a website found at **REDACTED** does not include any store in the United States. *See* Cuccias Declr., Exhibit I.

Indeed, there may be others.

Moreover, these non-U.S. sales appear to be not insignificant in relation to Applicant’s total sales volume. For example, just a single product (Item no. [REDACTED] sold by [REDACTED] accounts

⁵ *See* Cuccias Declr. Exhibit F, at Bates No. A-624 – A-625.

⁶ *See* Cuccias Declr. Exhibit F, at Bates No. A-620.

No. A-569 – A-572 *with* Applicant’s supplemental answer 2 , p. 29.

In short, it appears that some unidentified portion of Applicant’s relied-upon sales volume includes sales outside of the United States. However, sales occurring – and the commercial impression created in markets – outside of the United States are irrelevant to Applicant’s entitlement to obtain a U.S. trademark registration. *Double J of Broward, Inc. v. Skalony Sportswear GmbH*, 21 USPQ2d 1609, 1612-3 (TTAB 1192). Since it appears that Applicant’s U.S. sales and non-U.S. sales have been combined – without a means of distinguishing same – in Applicant’s total sales figures relied upon by the SJ Motion, Opposer respectfully submits that it is entitled to sales information for sales occurring in the United States, only, for the same period previously reported (*i.e.*, from 2007 through September, 2009).

2. Opposer Is Entitled to Discover Geographic Scope of Applicant’s Use of the Opposed Mark in the United States

The geographic scope of a party’s sales bears on the opportunity for instances of actual confusion. In order to address Applicant’s argument, Opposer respectfully submits that it is entitled to obtain discovery concerning the geographic scope of Applicant’s sales for the period set forth in Applicant’s supplemental responses, namely, from 2007 through September, 2009.

Opposer’s first set of written discovery included queries on this issue. Specifically, Opposer sought an identification of, *inter alia*, each state in which the mark has been used. Applicant responded: “nationwide”, for each product it sold.⁷ Such a response appears to be confusing and/or

⁷ While the interrogatory seeks, *inter alia*, the geographic area in which Applicant’s product “has been and/or is intended to be sold”, Applicant’s supplemental responses interpreted this as inquiring into the “geographic regions where each type of product was sold.” See Applicant’s Supplemental Response, p.1 (emphasis supplied).

Conclusion

Opposer respectfully requests that the Board grant its requests for discovery under Rule 56(f), and that a ruling on Applicant's Motion for summary judgment be continued pending further opportunity for discovery by Opposer, as requested herein.

Respectfully submitted,

LA SENZA CORP

By: Matthew J. Cuccias
George W. Lewis
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666
Attorneys for Opposer

Dated: August 30, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing OPPOSER'S MOTION FOR DISCOVERY UNDER FED. R. CIV. P. 56(f), to be served by first-class mail, postage prepaid, upon counsel for Applicant:

Philip A. Kantor
Law Offices of Philip A. Kantor, P.C.
1781 Village Center Circle , Suite 120
Las Vegas, NV 89134

on this 30th day of August, 2010

 Matthew J. Cuccias

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LA SENZA CORP.,

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Applicant.

Opposition No. 91185325

OPPOSER'S MOTION FOR DISCOVERY UNDER FED. R. CIV. P. 56(f)

Exhibit 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SENZA CORP.,

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OLYMPIC MOUNTAIN AND MARINE
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RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

I, Matthew James Cuccias, Esquire, submit this Declaration in support of Opposer's Motion for Discovery under Fed. R. Civ. P. 56(f), filed in response to Applicant's Motion for summary judgment ("SJ Motion").

1. Opposer served written discovery on Applicant, including, interrogatories and document requests. *See* relevant excerpts of Opposer's First Set of Interrogatories and Opposer's First Request for Production of Documents, attached to hereto as Exhibits A and B, respectively.

2. Applicant served responses to Opposer's written discovery. *See* relevant excerpts of Applicant's Response to Opposer's First Interrogatories, and Response to Request to Produce Documents, attached hereto as Exhibits C and D, respectively.

3. Subsequently, Applicant served supplemental answers to Opposer's interrogatories. *See* Applicant's Supplemental Response to Opposer's First Interrogatories, attached hereto as Exhibit E.

4. In response to Opposer's discovery requests, Applicant produced documents summarizing its sales history, relevant excerpts of which are attached hereto as Exhibit F.

5. Attached hereto as Exhibit G is a partial printout of a website found at **REDACTED** as of August 30, 2010.

6. Attached hereto as Exhibit H is a partial printout of a website found at **REDACTED**, as of August 30, 2010.

7. Attached hereto as Exhibit I is a partial printout of a website found at **REDACTED** as of August 30, 2010.

8. Applicant argued that it is entitled to summary judgment on Opposer's Section 2(d) claim on the basis of, *inter alia*, Applicant's allegation that there has been no actual confusion during contemporaneous use of the parties' respective marks. However, the sales information Applicant relied upon appears to include sales of products outside of the United States. Accordingly, Opposer seeks discovery related to sales information for sales occurring in the United States, only.

9. Moreover, in view of Applicant's argument, Opposer respectfully submits that it is entitled to specific information regarding the geographic scope of Applicant's use of the opposed mark, namely, an identification of each state in which the product has been sold.

10. As currently positioned, Opposer is unable to effectively respond to the SJ Motion. The facts sought by Opposer in the requested discovery, include: the geographic scope and amount of Applicant's sales in the United States.

11. In order to allow Opposer to adequately respond to the SJ Motion, Opposer seeks limited discovery, *see* Exhibits J and K, which largely track discovery Applicant has already answered.

12. Without the above-referenced documents and information, Opposer cannot effectively oppose the SJ Motion.

All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; further these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code.

August 30, 2010

By: */Matthew J. Cuccias/*
Matthew J. Cuccias

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SENZA CORP.,

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vs.

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OLYMPIC MOUNTAIN AND MARINE
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RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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LA SENZA CORP.,

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Opposition No. 91185325

OPPOSER'S FIRST SET OF INTERROGATORIES

Pursuant to Fed. R. Civ. P. 33, and Rule 2.120 of the Trademark Rules of Practice, Opposer requests that Applicant answer, in writing and under oath, the interrogatories propounded below. Such responses must be made within thirty (30) days of service of these interrogatories, in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

INTRODUCTION AND DEFINITIONS

A. As used herein, the term "person(s)" includes not only natural persons, officers, managing agents, supervisory personnel, and employees, but also includes, without limitation, firms, partnerships, associations, corporations and other legal entities, divisions, departments or other units thereof.

B. "Opposer" shall mean the nominal Opposer, LA SENZA CORP., and any predecessor(s) or successor(s) in interest, subsidiaries, divisions, franchisees and related companies, directors, officers and employees thereof.

C. "Applicant" shall mean the nominal Applicant, OLYMPIC MOUNTAIN AND MARINE PRODUCTS, INC., as well as any predecessor(s) or successor(s) in interest, and any partnership and/or corporation in which OLYMPIC MOUNTAIN AND MARINE PRODUCTS, INC. has an ownership interest and/or controls and which uses the opposed mark in any way, as well as all divisions, licensees, parent, subsidiary, affiliated or related companies thereof, and the partners, principals, directors, officers, agents and employees thereof. When an answer is supplied with respect to any predecessor or successor in interest, division, licensee, parent, subsidiary, affiliated or related company, this fact should be stated and such predecessor in interest, division, licensee, parent, subsidiary, affiliated or related company should be fully identified by name and principal place of business.

D. As used herein, the term "Opposer's Mark" shall refer individually and/or collectively to the marks/registrations pleaded in the Notice of Opposition, including, or in addition to, LA SENZA in any and all formats, used alone or in combination with any other word(s) or design(s), or symbol(s) as used by or on behalf of Opposer.

E. As used herein, the term "Applicant's Mark" refers to the mark of the opposed application in any and all forms and formats, used alone or in combination with any other word(s), design(s) or symbol(s), and/or any mark used by Applicant comprised of the term "ESSENZA".

F. As used herein, the term "document" is used in its broadest sense and means all documents, electronically-stored information, and tangible things listed or referred to in Rule 34(a)(1)(A) and (B) of the Federal Rules of Civil Procedure.

G. As used herein, "communication" is used in its broadest sense, to include, without limitation, the following:

- (1) any document, as defined hereinabove; and
- (2) any conversation, discussion, dialogue, conference, report, message, account, interview, exchange, and/or consultation, whether oral, written, or electronic.

H. "Identify" or "identification" with respect to a person, means provide the person's:

- (1) name;
- (2) last known residential address;
- (3) last known business address;
- (4) last known employer or business affiliation; and
- (5) occupation and business position held.

I. "Identify" or "identification" with respect to a company, partnership, firm, corporation or other non-juristic person, shall mean provide:

- (1) the name;
- (2) if incorporated, the place of incorporation;
- (3) if unincorporated, the name of the partners and/or principals; and
- (4) the address of such entity's principal place of business.

J. "Identify" or "identification" with respect to a document, shall mean provide:

- (1) the identity of the person or persons who prepared it, the sender, and all recipient(s), if any;
- (2) the title of the document;

- (3) a description of the general nature of its subject matter(s);
- (4) the date of preparation;
- (5) the date and manner of distribution and publication, if any;
- (6) the location of each copy, and the identity of the present custodian; and
- (7) the identity of the person or persons who can identify and/or authenticate it.

K. "Identify" or "identification" with respect to an act, occurrence, circumstance, or event (collectively "act"), shall mean providing:

- (1) a description of the act;
- (2) the date(s) the act occurred;
- (3) where the act occurred;
- (4) the identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);
- (5) the identity of all persons who have any knowledge or information, about or regarding the act, including the identity of each witness to the act;
- (6) when the act, or omission, first became known to Applicant; and
- (7) the circumstances and manner in which knowledge of the act was first obtained by Applicant.

L. "Identify" or "identification" with respect to goods, products, or services shall mean:

- (1) state the common descriptive name of said good, product or service;

(2) state the model number, identify the manufacturer and location of manufacture thereof;

(3) provide a detailed description of the purpose, function, and/or application of said good, product or service; and

(4) describe in detail the channels of trade in which such product or service is sold and/or rendered.

M. "Identify" or "identification" with respect to a search (including but not limited to trademark searches), survey, poll, or other investigation (collectively "search") shall mean:

(1) state the date and location of the search;

(2) identify and describe all documents examined or investigated in connection with the search;

(3) if applicable, state the size of the sample surveyed, how that sample was selected, and the questions asked;

(4) identify each person(s) who conducted the search;

(5) state all results and conclusions of the search, including, if applicable, each answer to each question posed;

(6) with respect to a search or similar investigation, identify each reference disclosed by providing the mark or name which is the subject of such reference, the owner of the mark or name, the registrant or applicant, the registration or serial number, and the goods and services listed in, or in connection with, such reference;

(7) identify each person who rendered any conclusions or opinion relating to such search;

(8) identify each person to whom the results, in whole or in part, of such search and/or any conclusion or opinion relating to such search, were communicated, and the date(s) of such communication;

(9) identify each person who has knowledge or information with respect to the search; and

(10) identify all documents which contain any results of, and/or refer or relate in any way to, such search.

N. "Advertising" and/or "promotional materials" shall mean, without limitation, advertisements, including advertising copy, advertising slicks, and line art; product packaging, labels, brochures, photographs, product sheets, point of sale displays, audio or video tapes; catalogues or other product guide books; signage, price lists, warranty information, Internet sites, web sites and/or pages, and/or any other document or material used and/or distributed to promote and/or solicit business, shipments, sales, and/or orders of products or services of Applicant.

O. "Identify" or "identification" with respect to "channels of trade" with respect to a product or service shall mean, without limitation:

(1) describe the circumstances surrounding the sale, distribution and/or rendition of such product/service; and

(2) state whether sales are through any one, or more, of the following means:

(a) retail,

- (b) wholesale,
- (c) direct mail,
- (d) electronic commerce,
- (e) visits by salespersons,
- (f) direct contact with customers,
- (g) provision of sample goods or services,
- (h) trade shows,
- (i) other means, and if so, describe the nature of the sale,
- (j) any combination of the above sub-sections (a) through (I) inclusive,

of this definition, and if so, identify the applicable channels.

P. As used herein, "media" or "medium" shall be construed to comprise newspapers, consumer magazines, trade publications, trade shows, catalogues, and any means of audio, video, and/or electronic transmission, and "identify" or "identification" with respect to "media" or "medium" shall mean, without limitation:

(1) provide, for each print medium: the name of the publication or print media; the date; volume number; geographical area and size of circulation; and if directed to a particular trade, industry, or type of reader/customer, describe such trade/ industry/reader;

(2) provide, for each audio and video transmission (including radio and television): the station and/or network on which such transmission was broadcast; the geographical area of broadcast; and the date of each broadcast.

(3) provide, for each direct mailing or other direct distribution (including electronic mailings): the geographic area and dates of such distribution; the number of such mailings/direct distributions sent or disseminated; a general description of the persons to whom distributed; and if a mailing list was used, the source and identification of each such mailing list.

(4) identify, for each medium referring or relating in any way to Applicant's products or services, the specifically referenced product(s) or service(s) and mark(s) therefor; and

(5) identify the persons employed or associated with Applicant who have most knowledge of same.

Q. "Identify" or "identification" with respect to any advertisement or promotional materials shall mean:

(1) identify the medium in which such advertisement/promotional material was published, broadcast or otherwise disseminated;

(2) identify each person who created, ordered, distributed and/or placed such advertisement;

(3) state where, when, and to whom said advertisement or promotional material, and/or copies of same, were distributed, and the number of copies distributed at each such place and time; and

(4) identify documents which would show when and where the advertisement was placed/broadcast/distributed and the costs thereof, including an identification of the advertisement itself.

R. “Identify” or “identification” with respect to any objection or complaint regarding the use of a name or mark, lawsuit, opposition, cancellation, or other *inter partes* proceeding, shall mean identify:

- (1) the person making the objection or complaint and/or on whose behalf the objection or complaint was made and/or who brought such lawsuit, opposition, cancellation or other *inter partes* proceeding;
- (2) the date when such objections, complaint, lawsuit, opposition, cancellation or other proceeding was made and/or instituted;
- (3) with respect to any lawsuit or proceeding, the parties thereto;
- (4) the civil action or docket number and/or other identifying indicator used by the tribunal before whom such was brought;
- (5) the court or other tribunal before whom the proceeding was brought;
- (6) the trademark(s) and/or service mark(s) at issue; and
- (7) the disposition and/or resolution of such objection, complaint or proceeding.

S. “Identify” or “identification” with respect to a retail outlet or store shall mean:

- (1) the retail outlet or store name;
- (2) the address of the retail outlet or store;
- (3) the owner(s) of the retail outlet or store;
- (4) the date on which the retail outlet or store was first opened to the public; and
- (5) to identify the products, services, and business offered or rendered by or from

such retail outlet or store.

T. "Identify" or "identification" with respect to an agreement, an assignment, license, understanding, or other contract or grant or transfer of rights, (collectively "agreement") shall mean:

- (1) identify the type of agreement — i.e. "assignment," "license," "consent to use," "distributorship agreement," etc.;
- (2) state the date and term of duration of the agreement, and whether such still is in effect;
- (3) identify the geographic scope of the agreement;
- (4) identify the parties to the agreement;
- (5) state whether the agreement is oral or in writing;
- (6) describe in detail any rights and/or property transferred by the agreement, including whether the goodwill in any business, in whole or in part, was transferred as part of, or in connection with, the agreement and, if so, describe in detail the nature and extent of any goodwill assigned, licensed, granted, or transferred;
- (7) if the agreement is a trademark or service mark license, identify the manner of control which is, or was, to be exercised with respect to the quality and character of the goods or services, on or in connection with which any affected mark was to be, or has been, used under such agreement;
- (8) state whether the assignor, licensor, grantor, transferor still was doing business at the time of the assignment, license, understanding, grant, transfer;
- (9) state whether the assignment/grant/transfer was one in bankruptcy;

(10) state whether the agreement was recorded in the Patent and Trademark Office or any other public record and, if so, state the date and place of such recordation(s);

(11) state in detail the conditions and terms of such agreement;

(12) identify all documents which evidence or refer or relate in any way to such agreement, including the agreement itself, if in writing;

(13) identify each person who drafted and/or participated in any way in the negotiations and/or drafting of the agreement, and/or who approved the same; and

(14) identify each person involved in or who has participated in the enforcement and/or execution of the agreement.

U. “Identify” or “identification” with respect to “expert witness,” shall mean, without limitation:

(1) identify such person;

(2) describe the qualifications for such expert;

(3) identify all articles, books or other publications authored in whole or in part by such expert;

(4) identify all documents which such expert has reviewed and/or upon which such expert may rely in connection with his or her testimony; and

(5) provide all of the information set forth in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

V. “Identify” or “identification” with respect to a trademark or service mark registration or application shall mean:

(1) the identification of the agency or office where filed, when filed, and/or who issued such registration;

(2) the names of the applicant and registrant;

(3) the serial and registration number;

(4) the filing and issue date(s);

(5) the present status thereof;

(6) if registration was refused, the reason(s) for such refusal;

(7) identify all documents referring to such registration/application filed in connection with such registration or application including the registration/application itself.

(8) identify whether any assignment or other documents have been received, and if so, what and when in connection with such registration application.

W. "Identify" or "identification" with respect to an instance of confusion or mistake and/or an instance where a person thought, arrived or otherwise indicated a belief there may be an association between the parties herein and/or other products or businesses means state:

(1) the identity of the person(s) confused or mistaken;

(2) the details of such event, including the "mistake" made and the substance of the "confusion;"

(3) the date and place of such event and/or instance of mistake or confusion;

(4) a description of the details of the manner in which such confusion, mistake, belief, assumption or indication was communicated or came to the attention of Applicant;

(5) the details of the response or communication, if any, made by or on behalf of Applicant, directly or indirectly, to the person so confused or mistaken or who communicated such confusion or mistake to Applicant;

(6) the identity of each person having knowledge of such confusion or mistake;
and

(7) the identity of all documents and communications which refer or relate in any way to such confusion or mistake.

X. As used herein, “and” or “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

Y. As used herein, “referring or relating to” means comprising, relating to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

Z. If Applicant is aware that a document or a group of documents once existed, but has been destroyed, in addition to the identification of the document as described herein, Applicant also is requested to state when the document or group of documents was destroyed, who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

AA. With respect to each document withheld on the ground of a claim of attorney privilege, identify such document in accordance with these definitions and instructions, and state in detail the basis and nature of such claim of privilege.

BB. These interrogatories shall be deemed to be continuing, requiring Applicant to serve upon Opposer amended or supplemental answers promptly after Applicant has acquired additional knowledge or information relating in any way to such interrogatories.

CC. With respect to any interrogatory which is asserted to be overbroad, or unduly burdensome, state all information requested which can be provided without undue burden, and/or which is relevant or might lead to the discovery of admissible evidence.

DD. Unless otherwise indicated, all discovery requests should be interpreted as referring to activities within the United States and/or interstate commerce and/or commerce which is regulatable by the Congress.

INTERROGATORIES

1. State the earliest date on which Applicant will rely in this proceeding to establish any rights in Applicant's mark vis-a-vis Opposer, and state in detail the basis for Applicant's claim of rights in Applicant's mark as of that date, including:

(a) a description of the manner of use of Applicant's mark as of that date (i.e., store signage, imprinted on the goods, on labels or tags for the goods, on packaging for the goods, in store displays, etc.);

(b) the identity of each person involved in any way in such use, including, but not limited to the identity of each witness who can testify on personal knowledge as to such use;

(c) the identification of each product and/or service in connection with which the mark was used on that date; and

(d) the identification of each document which evidences or supports such claim of use as of that date.

2. Identify each product and/or service with which Applicant's mark has been (or is intended to be) used in the United States, and with respect to each such product and/or service identify:

(a) the period of time during which Applicant's mark has been used with said product and/or service (*i.e.*, the date of Applicant's first sale of the product bearing Applicant's mark to the date of Applicant's last sale);

(b) if the use was by a person other than Applicant, identify that person, and state in detail the basis upon which Applicant claims such use inures, or will inure, to its benefit;

(c) the sales, on an annual basis, in terms of dollar volume and units, of such product and/or service from the date of first use of Applicant's mark in connection with such product and/or service, through the present;

(d) each price charged and/or to be charged by and/or paid to Applicant for such products and/or service; and


(e) each state or province in which such product and/or service has been and/or is intended to be sold under or in connection with Applicant's mark.

3. Identify each survey, search or other investigation conducted and/or obtained with respect to Opposer's Mark, Applicant's mark, the terms "essence" or "without", and/or the actual, potential, or intended market, and/or the actual, potential, or intended customers of, or consumers for, the goods to be offered for sale and/or sold under or in connection with any of Opposer's Mark and/or Applicant's mark.

23. If Applicant's response to Request No. 3 of Opposer's First Request for Admissions, served concurrently herewith, is anything other than an unqualified admission, identify the documents produced by Applicant which are not admissible as evidence in this proceeding.

LA SENZA CORP.

By: _____


George W. Lewis
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

March 30, 2009

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2008, a true copy of the foregoing Opposer's First Set of Interrogatories was served by first-class mail, postage prepaid, upon counsel for Applicant:

Clark A. Puntigam, Esquire
Jensen & Puntigam, P.S.
2033 6th Ave. Suite 1020
Seattle, WA 98121-2527



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LA SENZA CORP.,

Opposer,

VS.

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

Opposition No. 91185325

**OPPOSER'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer hereby requests that Applicant produce for inspection and copying the documents listed below at the place where such documents usually are kept, or at such other time and place as agreed upon by the parties.

INSTRUCTIONS AND DEFINITIONS

1. The Instructions and Definitions set forth in Opposer's First Set of Interrogatories, served concurrently herewith, are incorporated herein by reference and made a part hereof, as if fully stated herein.

2. Applicant shall designate in its responses with respect to each document requested, whether any documents responsive to the request exist; whether such documents will be produced by Applicant, when and where the documents will be produced, and where such documents usually are kept.

20. All documents which evidence, support, or show the denials in Applicant's Answer related to ¶10 of the Notice of Opposition.
21. All documents which refer or relate to Opposer.
22. All documents which refer or relate to Opposer's Mark.
23. All documents which refer or relate to Opposer's products and/or services.
24. All documents which refer or relate to Opposer's stores.
25. All documents which refer or relate to Opposer's Website.
26. All documents which refer or relate to the circumstances under which Applicant first became aware of the actual or possible use of Opposer's Mark.
27. All documents which evidence, relate or refer to the time Applicant first learned of Opposer.
28. All documents which evidence, relate or refer to the time Applicant first learned of Opposer's Mark.
29. All documents which evidence, relate or refer to the time Applicant first learned of Opposer's stores.
30. All documents which evidence, relate or refer to the time Applicant first learned of Opposer's Website.
31. For each product sold bearing Applicant's Mark, documents sufficient to show Applicant's annual sales, in numbers of units and in gross revenues, from the date of alleged first use of Applicant's mark to the present.

49. If Applicant's response to any of the requests in Opposer's First Request for Admissions, served concurrently herewith, is anything other than an unqualified admission, for each such request, all documents which evidence, show and/or support the denial of such Request for Admission, and/or Applicant's basis for Applicant's response to the Request for Admission.

50. A complete copy of each version of any web site linked to a domain name registered to Applicant, including but not limited to the HTML code for same, from the creation of the web site through the present.

51. A complete copy of each version of the website located at www.omplabs.com, including but not limited to the HTML code for same, from the creation of the web site through the present.

52. For each mark identified in response to Interrogatory Number 15, all documents which demonstrate, refer or relate to:

- a) the dates of usage(s) of such mark,
- b) the goods/services sold in connection with the mark,
- c) the identity of the party so using the mark, and
- d) where (name and address) these goods/services can be found in the marketplace.

53. Produce a copy of the certificate of registration for each trademark or service mark registration identified in response to Interrogatory Number 12.

54. All documents relating to the price of goods sold or to be sold under Applicant's Mark.

55. All documents relating to the price of the services (if any) offered or to be offered under Applicant's Mark.

56. All documents relating to any objection, lawsuit, opposition proceeding, cancellation proceeding or other proceeding involving or relating to Applicant's Mark.

57. With respect to each product and/or service with which Applicant's Mark has been or is intended to be used, documents sufficient to show whether or not Applicant's use of the mark in connection with such product/service has been continuous.

58. With respect to each product and/or service in connection with which Applicant's Mark has been or is intended to be used, all documents which evidence, refer, or relate to Applicant's first use in interstate commerce of Applicant's Mark in connection with each such product and/or service.

59. With respect to the earliest date on which Applicant will rely in this proceeding to establish Applicant's rights in Applicant's mark, all documents which evidence, support, refer, or relate to such claim or rights in Applicant's mark by Applicant as of that date.

60. All documents that reflect, relate to or refer to any confusion as to origin, endorsement, approval or sponsorship of goods or services sold, distributed or offered by Applicant under Applicant's mark and/or by Opposer under Opposer's Mark.

61. Documents sufficient to show each state in which the products and/or services have been sold under or offered in connection with Applicant's mark.

62. Documents sufficient to identify the persons involved in the management of Applicant, including an organization chart.

63. Applicant's policy regarding the retention or destruction of documents and things.
64. All documents constituting, referring or relating to Applicant's policy regarding the retention or destruction of documents and things.
65. Documents sufficient to identify all products being sold in the United States bearing Applicant's Mark.
66. Documents sufficient to identify all products being sold in Canada bearing Applicant's Mark.
67. Documents sufficient to identify all products Applicant intends to sell in the United States bearing Applicant's Mark.
68. Documents sufficient to identify all products Applicant intends to sell in Canada bearing Applicant's Mark.

LA SENZA CORP.

By:



George W. Lewis
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

March 30, 2009

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2009, a true copy of the foregoing Opposer's First Request for Production of Documents was served by first-class mail, postage prepaid, upon counsel for Applicant:

Clark A. Puntigam, Esquire
Jensen & Puntigam, P.S.
2033 6th Ave. Suite 1020
Seattle, WA 98121-2527

A handwritten signature in black ink, appearing to read "Clark A. Puntigam", is written over a horizontal line.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

Exhibit C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LA SENZA CORP., :
Opposer, :
v. : Opposition No. 91185325
OLYMPIC MOUNTAIN AND
MARINE PRODUCTS, INC., :
Applicant. :

APPLICANT'S RESPONSE TO OPPOSER'S
FIRST SET OF INTERROGATORIES

1. State the earliest date on which Applicant will rely in this proceeding to establish any rights in Applicant's mark vis-à-vis Opposer, and state in detail the basis for Applicant's claim of rights in Applicant's mark as of that date, including:

Response: March 1, 1997. This is the date on which Applicant's predecessor in interest, Aromatherapy of Rome ("AOR"), a Texas corporation, first used the mark ESSENZA in interstate commerce for candles in Class 4. The candles sold by AOR in interstate commerce continuously from that time have always consisted predominantly of scented candles. Applicant considers candles, especially scented candles, as closely related to the goods covered in

the trademark application at issue in this proceeding, namely, Serial No. 77/071,961 (the "Application"), which are scented oils used to produce aromas when heated and essential oils for household use in Class 3, and scent diffusers comprised of a container and wood rods used to diffuse oil scent poured in the container in Class 21. The goods covered in the Application are well within the zone of natural expansion of the ESSENZA mark for candles.

On September 9, 1998, AOR merged with Washington Aromatherapy of Rome, Inc., with the surviving company being the latter. On July 6, 1999, Washington Aroma Therapy of Rome, Inc. assigned a security interest in the trademark ESSENZA to Business Factors, Inc. On December 3, 1999, Washington Aromatherapy of Rome, Inc. changed its name to Big Wick Candle Company, Inc. and maintained the security interest to Business Factors, Inc. On November 20, 2000, Business Factors, Inc. foreclosed its security interest in the ESSENZA mark and assigned it to Aroma Candle and Scent Company. On December 30, 2005, Applicant acquired the ESSENZA mark from Aroma Candle & Scent Company. The documents showing each of these assignments and successions are submitted with these interrogatory responses.

AOR applied for trademark registration on the Principal Register of the ESSENZA word mark (in typed drawing form) for candles on July 31, 1997. The mark was duly registered on August 25, 1998, and has been continuously maintained by the various successor companies set forth above to the present day. As shown by the specimens filed in support of AOR's trademark application for ESSENZA under Lanham Act Section 1A, the mark has been used on candles in the same typeface and with the same graphical logo as Applicant uses the same mark on candles today, as well as on the goods covered in the Application.

(a) a description of the manner of use of Applicant's mark as of that date (i.e., store signage, imprinted on the goods, on labels or tags for the goods, on packaging for the goods, in store displays, etc.);

Response: Mark has been continuously used on candles by Applicant and its predecessors on labels affixed to the goods and on packaging for the goods.

(b) the identity of each person involved in any way in such use, including, but not limited to the identity of each witness who can testify on personal knowledge as to such use;

Response: Jeff Stice - CEO, Olympic Mountain Products, Inc., 8655 S. 208th Street, Kent, WA 98031; Laurie Severe - Accounting, 32454 46th Place, South Auburn, WA 98001; Spencer Krenke, c/o True Labs, Seattle, WA; Robert Schwai, c/o True Labs, Seattle, WA.

(c) the identification of each product and/or service in connection with which the mark was used on that date; and

Response: Applicant does not have a list of each product and/or service sold under the ESSENZA mark on March 1, 1997. However, the specimens filed by AOR in support of the registration of the ESSENZA mark for candles under Lanham Act Sec. 1A on July 31, 1997 are submitted with these interrogatory responses, identifying three products sold by AOR in interstate commerce under the ESSENZA mark as of that date, namely, an ESSENZA unscented white candle, an ESSENZA "for fragrance" honeydew candle, and an ESSENZA "aromatherapy" "calm" lavender & vanilla scent candle.

Also submitted with these interrogatory responses and identifying ESSENZA products sold by AOR (and successors) through the time the ESSENZA mark and registration were acquired by Applicant are the following:

(i) Email from Laurie Severe to Jeff Stice dated July 12, 2006 enclosing a 2002 Aroma Candle and Scent Company price list for ESSENZA candles;

(ii) A March 14, 2006 candle inventory by Applicant of ESSENZA candles from Aroma Candle and Scent Company;

(iii) March 14 and 16, 2006 emails from Laurie Severe to Jeff Stice discussing the foregoing inventory as labeled for Aroma Candle and Scent Company customer, Fred Meyer;

(iv) A close-out offer from Applicant to Ross Stores dated September 8, 2006 for inventory from Aroma Candle and Scent Company;

(v) Email string between Laurie Severe and Jeff Stice of February 7 and 10, 2006 regarding the ESSENZA artwork transition from Aroma Candle and Scent to Applicant;

(vi) Aroma Candle and Scent Company Inventory Valuation Report - Finished Goods created on December 28, 2005;

(vii) Emails dated January 27, March 21 and 22, April 7, May 3 and June 8, 2006 between Jeff Stice and

Costco regarding the upcoming transition program by
Applicant of ESSENZA candles; and

(viii) Applicant/Costco Item Agreement Quote Form
for the ESSENZA Candle Four Pack Set dated March 28, 2006.

Also submitted with these interrogatory responses
and identifying ESSENZA products sold by AOR is an AOR
sales order catalogue revised in October 2005 including the
"Color & Fragrance Collection," "Color Collection Unscented
Tapers," "Fall Holiday '05," the "Botanical Collection,"
"Aromatherapy of Rome," the "Cucina Collection," the
"Garden Collection," the "Soy Collection," "Essenza," the
"Yoga Collection (Goddess; Rituals; Zodiac)," cast aluminum
accessories and AOR solid perfumes. Some pages of the
catalogue indicate that they are pages printed off the
website at www.aromacandleandscent.com on September 14,
2005, and some pages of which bear copyright notices of
2004 or 2002.

(d) the identification of each document which
evidences or supports such claim of use as of that date.

Response: All documents referenced above, as well
as a document entitled "Retail & Vendor Partnership Manual"
dated September 1, 1997, a copy of which is being submitted
with these interrogatory responses; a document entitled

"Memo to Accounts Receivable" dated May 26, 2000, a copy of which is being submitted with these interrogatory responses; a document entitled "Aromatherapy of Rome / Central Castings & Hilite Merger" dated November 4, 1999, a copy of which is being submitted with these interrogatory responses; a document entitled "Important Notice to Wicks N Sticks Franchisees" dated pre-June 30, 1998, a copy of which is being submitted with these interrogatory responses; and an undated document entitled "Our Sincerest Apologies," a copy of which is being submitted with these interrogatory responses.

All of the foregoing documents were identified and produced for these responses by Jeff Stice - CEO, Olympic Mountain Products, 8655 South 208th Street, Kent, WA 98031, except for the specimens of use under Lanham Act 1A filed with the USPTO by AOR, which were printed from the USPTO TDR service.

2. Identify each product and/or service with which Applicant's mark has been (or is intended to be) used in the United States, and with respect to each such product and/or service identify:

(a) the period of time during which Applicant's mark has been used with said product and/or service (*i.e.*,

the date of Applicant's first sale of the product bearing Applicant's mark to the date of Applicant's last sale);

(b) if the use was by a person other than Applicant, identify that person, and state in detail the basis upon which Applicant claims such use inures, or will inure, to its benefit;

(c) the sales, on an annual basis, in terms of dollar volume and units, of such product and/or service from the date of first use of Applicant's mark in connection with such product and/or service, through the present;

(d) each price charged and/or to be charged by and/or paid to Applicant for such products and/or service; and

(e) each state or province in which such product and/or service has been and/or is intended to be sold under or in connection with Applicant's mark.

Response:

Product:	1 REDACTED therapy
Date of First Sale:	Pre-October 2005

REDACTED REDACTED

herewith, is anything other than an unqualified admission, identify the documents produced by Applicant which are not business records of Applicant kept in the normal course of Applicant's business.

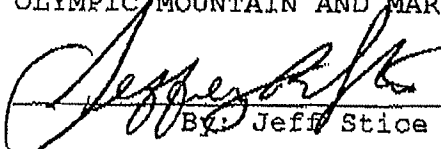
Response: Documents referred to above that were taken from records of the USPTO.

23. If Applicant's response to Request No. 3 of Opposer's First Request for Admissions, served concurrently herewith, is anything other than an unqualified admission, identify the documents produced by Applicant which are not admissible as evidence in this proceeding.

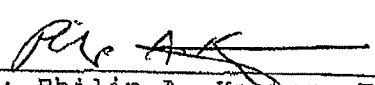
Response: N/A

Dated: June 16, 2009

OLYMPIC MOUNTAIN AND MARINE PRODUCTS, INC.

 6-16-09
By: Jeff Stice - CEO

LAW OFFICES OF PHILIP A. KANTOR, P.C.


By: Philip A. Kantor, Esq.

Nevada Bar No. 6701
Suite 202
8440 W. Lake Mead Boulevard
Las Vegas, NV 89128
(702) 255-1300

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2009,
a true copy of the foregoing Applicant's Responses to
Opposer's First Set of Interrogatories was served by first-
class mail, postage prepaid, upon counsel for Opposer:

JACOBSON HOLMAN PLLC
Attn.: Matthew J. Cuccias, Esq.
400 Seventh Street, N.W.
Washington, D.C. 20004



Rena Millet

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

Exhibit D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LA SENZA CORP., :
Opposer, :
v. : Opposition No. 91185325
OLYMPIC MOUNTAIN AND
MARINE PRODUCTS, INC., :
Applicant. :

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

1. The documents requested to be identified in
Opposer's First Set of Interrogatories, served on Applicant
concurrently herewith.

Response: Responsive documents are being served
concurrently herewith.

2. The documents referenced or identified by
Applicant in response to Opposer's First Set of
Interrogatories.

Response: Responsive documents are being served
concurrently herewith.

3. All documents that constitute, contain,
comment on, refer to, relate to, reflect, describe, and/or

30. All documents which evidence, relate or refer to the time Applicant first learned of Opposer's Website.

Response: There are no responsive documents, since Applicant had no awareness of Opposer except through the filing of this opposition proceeding.

31. For each product sold bearing Applicant's Mark, documents sufficient to show Applicant's annual sales, in numbers of units and in gross revenues, from the date of alleged first use of Applicant's mark to the present.

Response: Responsive documents are being served concurrently herewith, some as "Trade Secret/Commercially Sensitive" within the meaning of the Trademark Trial and Appeal Board standard protective order entitled "Provisions for Protecting Confidentiality of Information Revealed During Board Proceeding" and are marked "Confidential" to distinguish them from other production made hereunder.

32. For each service offered in connection with Applicant's Mark, documents sufficient to show Applicant's annual sales, in numbers of units and in gross revenues from the date of alleged first use of Applicant's mark to the present.

54. All documents relating to the price of goods sold or to be sold under Applicant's Mark.

Response: Responsive documents are being served concurrently herewith, some as "Trade Secret/Commercially Sensitive" within the meaning of the Trademark Trial and Appeal Board standard protective order entitled "Provisions for Protecting Confidentiality of Information Revealed During Board Proceeding" and are marked "Confidential" to distinguish them from other production made hereunder.

55. All documents relating to the price of the services (if any) offered or to be offered under Applicant's Mark.

Response: There are no responsive documents.

56. All documents relating to any objection, lawsuit, opposition proceeding, cancellation proceeding or other proceeding involving or relating to Applicant's Mark.

Response: Apart from the instant proceeding, there are no responsive documents.

57. With respect to each product and/or service with which Applicant's Mark has been or is intended to be used, documents sufficient to show whether or not

offered by Applicant under Applicant's mark and/or by Opposer under Opposer's Mark.

Response: There are no responsive documents.

61. Documents sufficient to show each state in which the products and/or services have been sold under or offered in connection with Applicant's mark.

Response: Responsive documents are being served concurrently herewith, some as "Trade Secret/Commercially Sensitive" within the meaning of the Trademark Trial and Appeal Board standard protective order entitled "Provisions for Protecting Confidentiality of Information Revealed During Board Proceeding" and are marked "Confidential" to distinguish them from other production made hereunder.

62. Documents sufficient to identify the persons involved in the management of Applicant, including an organization chart.

Response: There are no responsive documents.

63. Applicant's policy regarding the retention or destruction of documents and things.

Response: There are no responsive documents.

64. All documents constituting, referring or relating to Applicant's policy regarding the retention or destruction of documents and things.

Response: Responsive documents are being served concurrently herewith.

65. Documents sufficient to identify all products being sold in the United States bearing Applicant's Mark.

Response: Responsive samples are being served separately due to physical constraints.

66. Documents sufficient to identify all products being sold in Canada bearing Applicant's Mark.

Response: Responsive samples are being served separately due to physical constraints.

67. Documents sufficient to identify all products Applicant intends to sell in the United States bearing Applicant's Mark.

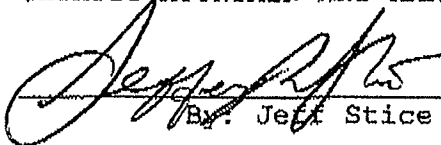
Response: Responsive documents are being served concurrently herewith.

68. Documents sufficient to identify all products Applicant intends to sell in Canada bearing Applicant's Mark.

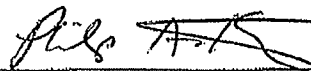
Response: Responsive documents are being served concurrently herewith.

Dated: June 16, 2009

OLYMPIC MOUNTAIN AND MARINE PRODUCTS, INC.

 6-16-09
By: Jeff Stice - CEO

LAW OFFICES OF PHILIP A. KANTOR, P.C.


By: Philip A. Kantor, Esq.

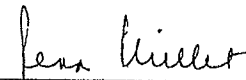
Nevada Bar No. 6701
Suite 202
8440 W. Lake Mead Boulevard
Las Vegas, NV 89128
(702) 255-1300

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2009, a true copy of the foregoing Applicant's Responses to Opposer's First Set of Interrogatories was served by first-class mail, postage prepaid, upon counsel for Opposer:

JACOBSON HOLMAN PLLC
Attn.: Matthew J. Cuccias, Esq.
400 Seventh Street, N.W.
Washington, D.C. 20004



Rena Millet

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

Exhibit E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LA SENZA CORP.,	:	
Opposer,	:	
v.	:	Opposition No. 91185325
OLYMPIC MOUNTAIN AND MARINE PRODUCTS, INC.,	:	
Applicant.	:	

APPLICANT'S SUPPLEMENTAL RESPONSE TO
OPPOSER'S FIRST SET OF INTERROGATORIES

Interrogatory No. 2 of Opposer's First Set of Interrogatories sought information regarding Applicant's sale of products under the ESSENZA mark, including information on type of products, first and last dates of sale of each type of product, number of units of each type of product sold, aggregate dollar value of each type of product sold, sale price of each type of product sold, and geographic regions where each type of product was sold.

Since responding to Interrogatory No. 2, Applicant has identified some omissions and errors in the response. For example, after product was sold in the ordinary course, some residual inventory was broken up (such as from 3-packs) and sold in smaller lots under different item

numbers. These residual sales were inadvertently not all picked up in the first response. These errors and omissions are corrected here.

Additionally, Applicant updates its response to Interrogatory No. 2 to account for sales occurring since the time period covered by Applicant's first response.

This Supplemental Response is provided in the form of a cumulative response to Interrogatory No. 2, rather than a document intended to be used in conjunction with Applicant's first response. By contrast, the documents provided with this Supplemental Response are only the documents omitted at the time of the first response, or supplementing the first response, and are Bates-numbered continuing from where the previous series of Bates numbers stopped.

* * *

2. Identify each product and/or service with which Applicant's mark has been (or is intended to be) used in the United States, and with respect to each such product and/or service identify:

(a) the period of time during which Applicant's mark has been used with said product and/or service (i.e.,

the date of Applicant's first sale of the product bearing Applicant's mark to the date of Applicant's last sale);

(b) if the use was by a person other than Applicant, identify that person, and state in detail the basis upon which Applicant claims such use inures, or will inure, to its benefit;

(c) the sales, on an annual basis, in terms of dollar volume and units, of such product and/or service from the date of first use of Applicant's mark in connection with such product and/or service, through the present;

(d) each price charged and/or to be charged by and/or paid to Applicant for such products and/or service; and

(e) each state or province in which such product and/or service has been and/or is intended to be sold under or in connection with Applicant's mark.

Response:

Product:	REDACTED therapy
Date of First Sale:	Pre-October 2005

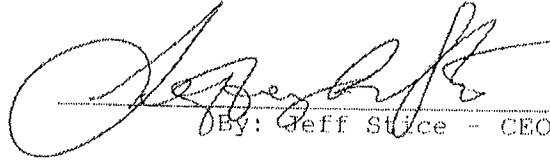
REDACTED

Product:	I	REDACTED	REDACTED
Date of First Sale:		REDACTED	
Date of Last Sale:		REDACTED	
Use by Other Than Applicant:		REDACTED	
Total Sales (units):	1	REDACTED	
Total Sales (\$):		REDACTED	
Price:		REDACTED	
State/Province of Sale:	N	REDACTED	

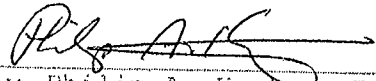
Documents reflecting the information set forth above include the Aroma Candle and Scent Company documents referred to above and below and submitted with these interrogatory responses, and a series of Olympic Mountain Products documents submitted with these interrogatory responses entitled "O/E Sales History By Invoice Date/Customer." The foregoing information and documents were supplied by Jeff Stice - CEO and Tina Werden - Accountant, c/o Olympic Mountain Products, 8655 South 208th Street, Kent WA 98031.

Dated: September 30, 2009

OLYMPIC MOUNTAIN AND MARINE PRODUCTS, INC.

 9.30.09
By: Jeff Stice - CEO

LAW OFFICES OF PHILIP A. KANTOR, P.C.


By: Philip A. Kantor, Esq.

Nevada Bar No. 6701
Suite 202
8440 W. Lake Mead Boulevard
Las Vegas, NV 89128
(702) 255-1300

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2009, a true copy of the foregoing Applicant's Supplemental Responses to Opposer's First Set of Interrogatories was served by first-class mail, postage prepaid, upon counsel for Opposer:

JACOBSON HOLMAN PLLC
Attn.: Matthew J. Cuccias, Esq.
400 Seventh Street, N.W.
Washington, D.C. 20004


Rena Millet

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

Exhibit F

REDACTED

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

Exhibit G

REDACTED

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

Exhibit H

REDACTED

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

RULE 56(f) DECLARATION OF MATTHEW JAMES CUCCIAS, ESQ.

Exhibit I

REDACTED

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

Exhibit J

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LA SENZA CORP.,

Opposer,

VS.

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

Opposition No. 91185325

OPPOSER'S SECOND SET OF INTERROGATORIES

Pursuant to Fed. R. Civ. P. 33, Rule 2.120 of the Trademark Rules of Practice, and Opposer's Motion for Discovery under Fed. R. Civ. P. 56(f), Opposer requests that Applicant answer, in writing and under oath, the interrogatories propounded below. Such responses must be made within thirty (30) days of service of these interrogatories, in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

INTRODUCTION AND DEFINITIONS

A. The Instructions and Definitions set forth in Opposer's First Set of Interrogatories, previously served, are incorporated herein by reference and made a part hereof, as if fully stated herein.

INTERROGATORIES

1. Identify, and describe, each product with which Applicant's mark has been used in the United States from 2007 through September 30, 2009, and with respect to each such product, identify:

(a) the period of time during which Applicant's mark has been used with said product (*i.e.*, the date of Applicant's first sale of the product bearing Applicant's mark to the date of Applicant's last sale);

(b) if the use was by a person other than Applicant, identify that person, and state in detail the basis upon which Applicant claims such use inures, or will inure, to its benefit;

(c) the sales, on an annual basis, in terms of U.S. dollar volume and units, of such product from the date of first use of Applicant's mark in connection with such product, through the present;

(d) each price charged by and/or paid to Applicant for such products; and

(e) each state in which such product has been sold under Applicant's mark.

(f) if the sale was to any entity other than the end consumer (*e.g.*, a wholesaler, distributor or retail chain; hereinafter the "corporate customer"), identify the city and state to which the shipment of Applicant's products was received by said corporate customer; and identify those states in which Applicant knows said corporate customer sold Applicant's products bearing Applicant's Mark.

2. If Applicant contends that it knows in which states its corporate customers sell Applicant's products bearing Applicant's Mark, explain in detail the bases for such knowledge.

3. For each product listed in response to Interrogatory No. 1 (above), identify sales made to any corporate customer which sells products to the end consumer in more than one country.

4. If Applicant receives sales reports from Applicant's corporate customers identifying the states in which Applicant's products have been sold bearing Applicant's Mark, please identify and produce such reports.

5. Identify, by request number, each request in Opposer's Second Request for Production of Documents served in this opposition for which (a) Applicant has not or will not produce any documents; and/or (b) there are no responsive documents in Applicant's possession, custody or control.

LA SENZA CORP.

By: Matthew J. Cuccias
George W. Lewis
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

August 30, 2010

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2010, a true copy of the foregoing Opposer's Second Set of Interrogatories was served by first-class mail, postage prepaid, upon counsel for Applicant:

Philip A. Kantor
Law Offices of Philip A. Kantor, P.C.
1781 Village Center Circle , Suite 120
Las Vegas, NV 89134

/Matthew J. Cuccias/

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SENZA CORP.,

Opposer

vs.

Opposition No. 91185325

OLYMPIC MOUNTAIN AND MARINE
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Exhibit K

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LA SENZA CORP.,

Opposer,

VS.

OLYMPIC MOUNTAIN AND MARINE
PRODUCTS, INC.,

Applicant.

Opposition No. 91185325

**OPPOSER'S SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer hereby requests that Applicant produce for inspection and copying the documents listed below at the place where such documents usually are kept, or at such other time and place as agreed upon by the parties.

INSTRUCTIONS AND DEFINITIONS

1. The Instructions and Definitions set forth in Opposer's First Set of Interrogatories, previously served, are incorporated herein by reference and made a part hereof, as if fully stated herein.

2. Applicant shall designate in its responses with respect to each document requested, whether any documents responsive to the request exist; whether such documents will be produced by Applicant, when and where the documents will be produced, and where such documents usually are kept.

DOCUMENT REQUESTS

1. The documents requested to be identified in Opposer's Second Set of Interrogatories, served on Applicant concurrently herewith.
2. The documents referenced or identified by Applicant in response to Opposer's Second Set of Interrogatories.
3. For each product sold in the United States market bearing Applicant's Mark, documents sufficient to show Applicant's annual sales, in numbers of units and in gross revenues (U.S. Dollars), from 2007 through September 30, 2009.
4. Documents sufficient to identify the price of goods sold under Applicant's Mark in the United States.
5. If Applicant sold products under the opposed mark to any entity other than the end consumer (*e.g.*, a wholesaler, distributor or retail chain; hereinafter the "corporate customer"), produce documents sufficient to identify:
 - a. the city and state to which the shipment of Applicant's products was received by said corporate customer; and
 - b. those states in which Applicant knows said corporate customer sold Applicant's products.
6. Documents sufficient to identify Applicant's corporate customers which sell products in more than one country.
7. Sales reports from Applicant's corporate customers identifying the states in which Applicant's products have been sold bearing Applicant's Mark.

7 Documents sufficient to identify all products (by item or product number) being sold in the United States bearing Applicant's Mark.

8 Documents sufficient to identify all products (by item or product number) being sold in Canada bearing Applicant's Mark.

LA SENZA CORP.

By: /Matthew J. Cuccias/
George W. Lewis
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August 30, 2010

Attorneys for Opposer

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Las Vegas, NV 89134

/Matthew J. Cuccias/